

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 202

AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-11-2-87 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 87. (a) "Fund", for purposes of IC 13-14-12, refers to the environmental management special fund.

(b) "Fund", for purposes of IC 13-15-10, refers to the waste facility operator trust fund.

(c) "Fund", for purposes of IC 13-15-11, refers to the environmental management permit operation fund.

(d) "Fund", for purposes of IC 13-17-6, refers to the asbestos trust fund.

(e) "Fund", for purposes of IC 13-17-8, refers to the Title V operating permit program trust fund.

~~(f) "Fund", for purposes of IC 13-17-14, refers to the lead trust fund.~~

~~(g)~~ (f) "Fund", for purposes of IC 13-18-8-5, refers to a sanitary fund.

~~(h)~~ (g) "Fund", for purposes of IC 13-18-13, refers to the wastewater revolving loan fund established by IC 13-18-13-2.

~~(i)~~ (h) "Fund", for purposes of IC 13-18-21, refers to the drinking water revolving loan fund established by IC 13-18-21-2. The term does not include the supplemental fund established by IC 13-18-21-22.

~~(j)~~ (i) "Fund", for purposes of IC 13-19-5, refers to the environmental remediation revolving loan fund established by

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IC 13-19-5-2.

~~(k)~~ (j) "Fund", for purposes of IC 13-20-4, refers to the municipal waste transportation fund.

~~(j)~~ (k) "Fund", for purposes of IC 13-20-13, refers to the waste tire management fund.

~~(m)~~ (l) "Fund", for purposes of IC 13-20-22, refers to the state solid waste management fund.

~~(n)~~ (m) "Fund", for purposes of IC 13-21-7, refers to the waste management district bond fund.

~~(o)~~ (n) "Fund", for purposes of IC 13-21-13-2, refers to a district solid waste management fund.

~~(p)~~ (o) "Fund", for purposes of IC 13-23-6, refers to the underground petroleum storage tank trust fund.

~~(q)~~ (p) "Fund", for purposes of IC 13-23-7, refers to the underground petroleum storage tank excess liability trust fund.

~~(r)~~ (q) "Fund", for purposes of IC 13-25-4, refers to the hazardous substances response trust fund.

~~(s)~~ (r) "Fund", for purposes of IC 13-25-5, refers to the voluntary remediation fund.

~~(t)~~ (s) "Fund", for purposes of IC 13-28-2, refers to the voluntary compliance fund.

SECTION 2. IC 13-30-10-1.5, AS ADDED BY P.L.114-2008, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. (a) Except as provided in subsection (b), a person regulated under IC 13-22 who knowingly does any of the following commits a Class B misdemeanor:

- (1) Transports hazardous waste to an unpermitted facility.
- (2) Treats, stores, or disposes of hazardous waste without a permit issued by the department.
- (3) Transports, treats, stores, disposes, recycles, or causes to be transported used oil regulated under 329 IAC 13 in violation of the standards established by the department for the management of used oil.
- (4) Makes a false material statement or representation in any label, manifest, record, report, or other document filed or maintained under the hazardous waste or used oil standards.

(b) An offense under subsection (a) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (a) is a Class C felony if the offense results in the death of another person.

(c) Before imposing sentence upon conviction of an offense under subsection (a) or (b), the court shall consider either or both of the

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following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

- (A) A substantial risk of serious bodily injury.
- (B) Serious bodily injury to an individual.
- (C) The death of a vertebrate animal.
- (D) Damage to the environment that:
 - (i) renders the environment unfit for human or vertebrate animal life; or
 - (ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(d) Notwithstanding the maximum fine under IC 35-50-3-3, the court shall order a person convicted under subsection (a) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.

(e) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (b) to pay:

- (1) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or
- (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation.

(f) Except as provided in subsection (g), a person regulated under IC 13-17 who does any of the following commits a Class C misdemeanor:

- (1) Knowingly violates any applicable requirements of IC 13-17-4, IC 13-17-5, IC 13-17-6, IC 13-17-7, IC 13-17-8, IC 13-17-9, IC 13-17-10, ~~or IC 13-17-13. or IC 13-17-14.~~
- (2) Knowingly violates any air pollution registration, construction, or operating permit condition issued by the department.
- (3) Knowingly violates any fee or filing requirement in IC 13-17.
- (4) Knowingly makes any false material statement, representation, or certification in any form, notice, or report required by an air

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pollution registration, construction, or operating permit issued by the department.

(g) An offense under subsection (f) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (f) is a Class C felony if the offense results in the death of another person.

(h) Before imposing sentence upon conviction of an offense under subsection (f) or (g), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(i) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (f) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.

(j) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (g) to pay:

(1) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation.

(k) Except as provided in subsection (l), a person regulated under IC 13-18 who does any of the following commits a Class C misdemeanor:

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(1) Willfully or recklessly violates any applicable standards or limitations of IC 13-18-3-2.4, IC 13-18-4-5, IC 13-18-8, IC 13-18-9, IC 13-18-10, IC 13-18-12, IC 13-18-14, IC 13-18-15, or IC 13-18-16.

(2) Willfully or recklessly violates any National Pollutant Discharge Elimination System permit condition issued by the department under IC 13-18-19.

(3) Willfully or recklessly violates any National Pollutant Discharge Elimination System Permit filing requirement.

(4) Knowingly makes any false material statement, representation, or certification in any National Pollutant Discharge Elimination System Permit form or in any notice or report required by a National Pollutant Discharge Elimination System permit issued by the department.

(l) An offense under subsection (k) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (k) is a Class C felony if the offense results in the death of another person.

(m) Before imposing sentence upon conviction of an offense under subsection (k) or (l), the court shall consider any or a combination of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(3) Whether the discharge was the result of a combined sewer overflow and the person regulated had given notice of that fact to the department.

(n) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (k)(1), (k)(2), or

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(k)(3) to pay a fine of at least five thousand dollars (\$5,000) a day for each violation and not more than twenty-five thousand dollars (\$25,000) a day for each violation.

(o) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (k)(4) to pay a fine of at least five thousand dollars (\$5,000) for each instance of violation and not more than ten thousand dollars (\$10,000) for each instance of violation.

(p) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (l) to pay:

- (1) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or
- (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation.

(q) The penalties under this section apply regardless of whether a person uses electronic submissions or paper documents to accomplish the actions described in this section.

SECTION 3. IC 16-18-2-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. (a) "Abatement", for purposes of IC 16-41-39.8, means any measure or set of measures designed to permanently eliminate lead-based paint hazards. The term includes the following:**

- (1) The removal of lead-based paint and lead-contaminated dust.**
- (2) The permanent enclosure or encapsulation of lead-based paint.**
- (3) The replacement of lead-painted surfaces or fixtures.**
- (4) The removal or covering of lead-contaminated soil.**
- (5) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with subdivisions (1) through (4).**
- (6) A project for which there is a written contract or other documentation, providing that a person will be conducting activities in or to a residential dwelling or child occupied facility that:**
 - (A) will permanently eliminate lead-based paint hazards;**
 - or**
 - (B) are designed to permanently eliminate lead-based paint**

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hazards as described under subdivisions (1) through (5).

(7) A project resulting in the permanent elimination of lead-based paint hazards, conducted by persons certified under 40 CFR 745.226 or IC 13-17-14, unless the project is described under subsection (b) or (c).

(8) A project resulting in the permanent elimination of lead-based paint hazards, conducted by persons who, through the person's company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless those projects are described under subsection (b) or (c).

(9) A project resulting in the permanent elimination of lead-based paint hazards that is conducted in response to state or local abatement orders.

(b) The term does not include renovation, remodeling, landscaping, or other activities when those activities are not designed to permanently eliminate lead-based paint hazards but are designed to repair, restore, or remodel a structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

(c) The term does not include interim controls, operations, or maintenance activities or other measures designed to temporarily reduce lead-based paint hazards.

SECTION 4. IC 16-18-2-54.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 54.7. "Child-occupied facility", for purposes of lead-based paint activities and IC 16-41-39.8, means a building or a portion of a building that:

- (1) was constructed before 1978;
- (2) does not qualify as target housing (as defined in section 346.3 of this chapter); and
- (3) is visited regularly by a child who is not more than six (6) years of age under the following circumstances described in clause (A), (B), or (C):

(A) The child visits at least two (2) days a week (Sunday through Saturday) and each of the visits lasts at least three (3) hours.

(B) The child visits at least six (6) hours each week.

(C) The child's combined annual visits during a calendar year total at least sixty (60) hours.

The term includes day care centers, preschools, and kindergarten classrooms.

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SECTION 5. IC 16-18-2-56.2, AS ADDED BY P.L.102-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 56.2. "Clearance examination", for purposes of IC 16-41-39.4, means an activity conducted by a clearance examiner who is licensed under ~~IC 13-17-14~~ **IC 16-41-39.8** to establish proper completion of interim controls (as defined in 24 CFR 35.110).

SECTION 6. IC 16-18-2-66.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 66.7. "Component", for purposes of IC 16-41-39.8, has the meaning set forth in 24 CFR 35.110, as in effect July 1, 2002.**

SECTION 7. IC 16-18-2-106.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 106.6. "Elevated blood lead level", for purposes of IC 16-41-39.8, means a blood lead level of at least ten (10) micrograms of lead per deciliter of whole blood.**

SECTION 8. IC 16-18-2-114.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 114.5. "Encapsulant", for purposes of IC 16-41-39.8, means a substance that forms a barrier between lead-based paint and the environment using a liquid applied coating, with or without reinforcement materials, or an adhesively bonded covering material.**

SECTION 9. IC 16-18-2-114.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 114.6. "Encapsulation", for purposes of IC 16-41-39.8, means the application of an encapsulant.**

SECTION 10. IC 16-18-2-143, AS AMENDED BY P.L.102-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 143. (a) "Fund", for purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.

(b) "Fund", for purposes of IC 16-31-8.5, has the meaning set forth in IC 16-31-8.5-2.

(c) "Fund", for purposes of IC 16-41-39.4, refers to the childhood lead poisoning prevention fund established by IC 16-41-39.4-3.1.

(d) "Fund", for purposes of IC 16-41-39.8, refers to the lead trust fund established by IC 16-41-39.8-7.

~~(d)~~ (e) "Fund", for purposes of IC 16-46-5, has the meaning set forth in IC 16-46-5-3.

~~(e)~~ (f) "Fund", for purposes of IC 16-46-12, has the meaning set forth in IC 16-46-12-1.

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(f) (g) "Fund", for purposes of IC 16-41-42.2, has the meaning set forth in IC 16-41-42.2-2.

SECTION 11. IC 16-18-2-198.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 198.5. "Lead-based paint", for purposes of IC 16-41-39.8, means paint or another surface coating that contains lead in an amount equal to or more than one (1) milligram per square centimeter, or in the amount of more than one-half percent (0.5%) by weight.**

SECTION 12. IC 16-18-2-198.7, AS ADDED BY P.L.102-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 198.7. (a) "Lead-based paint activities", for purposes of IC 16-41-39.4 has the meaning set forth in IC 16-41-39.4-5, and IC 16-41-39.8, means the inspection risk assessment and abatement of lead-based paint in target housing and child occupied facilities.**

(b) The term includes project design and supervision.

SECTION 13. IC 16-18-2-315.8, AS ADDED BY P.L.102-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 315.8. "Remediation" means actions that constitute:**

- (1) abatement (as defined in ~~IC 16-18-2-0.5~~; **IC 16-18-2-0.5**); or
 - (2) interim control (as defined in 24 CFR 35.110);
- of a lead hazard.

SECTION 14. IC 16-18-2-346.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 346.3. (a) "Target housing", for purposes of lead-based paint activities and IC 16-41-39.8, means housing constructed before January 1, 1978.**

(b) The term does not include the following:

- (1) Housing for the elderly or individuals with disabilities that is not occupied by or expected to be occupied by a child of not more than six (6) years of age.**
- (2) A building without a bedroom.**

SECTION 15. IC 16-41-39.4-6, AS ADDED BY P.L.102-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6. (a) The lead-safe housing advisory council is established to advise the state department concerning housing related lead poisoning prevention activities.**

(b) The advisory council consists of the following members:

- (1) The state health commissioner, or the state health commissioner's designee, who shall serve as the chairperson of**

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the advisory council.

(2) The director of the Indiana housing and community development authority or the director's designee.

(3) The local health officer of each of three (3) local health departments, appointed by the state health commissioner to represent a diverse geographic and population mix, or the local health officer's designee.

(4) The following individuals, appointed by the governor:

(A) A representative of realtors in Indiana.

(B) A representative of home builders or remodelers in Indiana.

(C) A pediatrician or other physician with knowledge of lead poisoning.

(D) A representative of the private lead-based paint abatement industry who is licensed under ~~IC 13-17-14~~ **IC 16-41-39.8** to perform or supervise lead-based paint activities.

(E) A representative of a community based organization located in a community with a significant concentration of high risk lead-contaminated properties, as determined by a high prevalence in the community of:

(i) low income families having children with lead poisoning; and

(ii) housing units that were built before 1978.

(F) A parent of a child with lead poisoning.

(G) A representative from a child or health advocacy organization.

(H) A residential tenant.

(I) A representative of the paint and coatings industry.

(J) A representative of public housing administrators.

(K) A representative of residential rental property owners.

(L) A representative of licensed lead-based paint activities training providers.

(M) A representative of community action program agencies.

(N) A representative of the banking industry.

(O) An individual who is licensed as a lead-based paint activities inspector under ~~IC 13-17-14~~ **IC 16-41-39.8**.

(P) A child care provider.

(c) The advisory council shall meet at least quarterly. The first meeting of the advisory council must occur not later than July 1, 2008.

(d) The advisory council shall submit to the governor, the attorney general, and, in an electronic format under IC 5-14-6, the legislative council the following:

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- (1) A preliminary report before November 1, 2008.
- (2) A final report before November 1, 2009.
- (e) The reports required by subsection (d) shall contain the recommendations of the advisory council concerning the following:
 - (1) Development of a primary prevention program to address housing related lead poisoning.
 - (2) Development of a sufficient number of licensed lead inspectors, risk assessors, clearance examiners, individuals who are trained in lead-safe work practices, abatement workers, and contractors.
 - (3) Ensuring lead-safe work practices in remodeling, rehabilitation, and weatherization work.
 - (4) Funding mechanisms to assist child care and residential property owners with the cost of lead abatement, remediation, and mitigation, including interim controls.
 - (5) A procedure for distribution of funds from the Indiana lead trust fund established by ~~IC 13-17-14-6~~ **IC 16-41-39.8-7** to pay the cost of implementation of 40 CFR 745 for lead-based paint activities in target housing and child occupied facilities.
 - (6) A program to ensure that the resale of recycled building products does not pose a significant risk of lead poisoning to children.
 - (7) Necessary statutory or administrative rule changes to improve the effectiveness of state and local lead abatement, remediation, including interim controls, and other lead poisoning prevention and control activities.
 - (8) The content of a basic lead training course for child care workers concerning lead hazards that:
 - (A) includes lead-based paint rules awareness; and
 - (B) includes information concerning how the course should be made available to child care workers.
 - (9) For the preliminary report, recommendations for legislation to be introduced in the 2009 session of the general assembly.
- (f) The state department shall staff and provide administrative and logistical support to the advisory council, including conference telephone capability for meetings of the advisory council.
- (g) Each member of the advisory council who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

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(h) A majority of the members appointed to the advisory council is required for the advisory council to take action on any measure, including final reports.

(i) This section expires July 1, 2011.

SECTION 16. IC 16-41-39.4-7, AS ADDED BY P.L.102-2008, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A retail establishment that sells paint or paint products shall do all of the following:

- (1) Offer for sale a lead test kit that is capable of determining the presence of a lead-based paint hazard.
- (2) Provide to customers the federal Environmental Protection Agency pamphlet "Protect Your Family from Lead in Your Home" or a similar source of information approved by the state department.
- (3) Ensure that at least one (1) employee who provides advice to customers concerning paint and paint products:
 - (A) attends a training program concerning lead hazards; and
 - (B) provides training to other employees who provide advice to customers concerning paint and paint products.

This subsection does not apply to a paint or paint product that is used solely for a craft or hobby.

(b) A person that sells, offers for sale, or distributes a consumer product shall not remove, erase, or obscure the visibility of a statement that:

- (1) the manufacturer or wholesaler of the consumer product has placed on the consumer product or the container or wrapper in which the consumer product is contained; and
- (2) specifies that the consumer product contains or may contain lead.

(c) A person shall not sell or offer for sale at wholesale or retail or distribute a consumer product, surface coating material, a food product, or food packaging that:

- (1) is a banned hazardous substance under the federal Hazardous Substances Act (15 U.S.C. 1261(q)(1)); or
- (2) has been determined by the state department to:
 - (A) have a lead content that is greater than the lesser of the lead content specifications for lead paint in 16 CFR 1303.2 or state law; and
 - (B) pose a danger of childhood lead poisoning because the product, material, or packaging is reasonably expected to be accessible to, chewed by, or ingested by a child who is less than seven (7) years of age.

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(d) If the state department, based on:

- (1) test results performed by a certified laboratory at the state department's request;
- (2) information received from a federal agency; or
- (3) other reliable information;

has reason to believe that a person has violated this section, the state department may, with or without a prior hearing, issue to the person a cease and desist order if the commissioner determines a cease and desist order is in the public interest. In addition to all other remedies, the commissioner may bring an action in the name and on behalf of the state against the person to enjoin the person from violating this section.

(e) The state department or a local health department may at any time during regular business hours inspect any premises where consumer products are sold, offered for sale, or distributed to establish compliance with this section.

(f) The state department may seize an item that is sold, offered for sale, or distributed in violation of this section.

(g) The state department shall, not later than May 1, 2009, adopt rules under IC 4-22-2 to implement this section. The rules adopted under this subsection:

(1) may:

- (A) establish exceptions under which items described in subsection (c) may be sold, offered for sale, or distributed upon the state department's determination that the risk posed to children by the items is minimal; or
- (B) require labeling of an item or signage to reflect that the item contains lead; and

(2) must be consistent with federal law.

SECTION 17. IC 16-41-39.8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 39.8. Lead-Based Paint Activities

Sec. 1. (a) This chapter does not apply to the following:

- (1) A person making an inspection under the authority of IC 22-8-1.1.**
- (2) A person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by:**
 - (A) a person, other than the owner or the owner's immediate family, while these activities are being performed; or**
 - (B) a child who:**

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- (i) is not more than six (6) years of age or an age specified in rules adopted under section 6 of this chapter; and
- (ii) resides in the building and has been identified as having an elevated blood lead level.

(b) This chapter may not be construed as requiring the abatement of lead-based paint hazards in a child occupied facility or target housing.

Sec. 2. (a) The lead-based paint activities program is established. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child occupied facilities, and any other type of building specified in rules adopted under section 6 of this chapter does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than six (6) years of age.

(b) The state department may investigate lead-based paint abatement activities in target housing and child-occupied facilities under the following circumstances:

- (1) The state department has received a written complaint about abatement activities.
- (2) The state department has been informed of a child who:
 - (A) is:
 - (i) not more than six (6) years of age; or
 - (ii) an age specified in rules adopted under section 6 of this chapter;
 - (B) has been identified as having an elevated blood lead level; and
 - (C) has visited the site to be investigated.
- (3) The state department is ensuring regulatory compliance with licensure and abatement activities.

Sec. 3. (a) A person who engages in lead-based paint activities must obtain a license under this chapter and under rules adopted under section 6 of this chapter. Lead-based paint activities licenses issued under IC 13-17-14 (before its repeal) or under this chapter expire as follows:

- (1) On June 30, 2004, if issued before July 1, 2002.
- (2) Three (3) years after the date of issuance, if issued after June 30, 2002.

(b) A person may receive a lead-based paint activities license under this chapter for the following disciplines:

- (1) Inspector.

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- (2) Risk assessor.
- (3) Project designer.
- (4) Supervisor.
- (5) Abatement worker.
- (6) Contractor.

(c) A person may receive a clearance examiner license under this chapter. A person who engages in the clearance of nonabatement activities under 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002, must obtain a clearance examiner license under this chapter and under rules adopted under section 6 of this chapter. A clearance examiner license expires three (3) years after the date of issuance.

(d) A person who enters into a contract requiring the person to execute for compensation lead-based paint activities must hold a lead-based paint activities contractor's license.

(e) A person must:

- (1) take required training and pass an examination provided in a lead-based paint training course or clearance examiner training course, as appropriate, approved by the state department;

(2) for a license in the discipline of:

- (A) inspector;
- (B) risk assessor;
- (C) project designer; or
- (D) supervisor;

pass an examination provided by the state department or a third party as required by rules adopted under section 6 of this chapter; and

- (3) meet any requirements established by rules adopted under section 6 of this chapter;

before the person may receive a lead-based paint activities license or clearance examiner license.

(f) The state department may issue a license for a position listed under subsection (b) or (c) if the applicant submits proof to the state department that the applicant satisfies the training, examination, and other requirements for the license under this chapter.

(g) A:

- (1) lead-based paint activities license; or
- (2) clearance examiner license;

issued under IC 13-17-14 (before its repeal) or this chapter may be renewed for a period of three (3) years. To renew a license, a

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person who holds a license for a position listed in subsection (b) or (c) must complete refresher training and pass any reexamination required by rules adopted under section 6 of this chapter.

(h) A lead-based paint activities contractor licensed under this chapter may not allow an agent or employee of the contractor to:

- (1) exercise control over a lead-based paint activities project;
- (2) come into contact with lead-based paint; or
- (3) engage in lead-based paint activities;

unless the agent or employee is licensed under this chapter.

(i) A person engaging in lead-based paint activities shall comply with the work practice standards established in rules adopted under section 6 of this chapter and the applicable work practice standards established in section 13 of this chapter for performing the appropriate lead-based paint activities.

Sec. 4. (a) A lead-based paint activities training program must meet requirements specified in rules adopted under section 6 of this chapter before providing initial or refresher training to a person seeking a license listed in section 3(b) of this chapter.

(b) The state department may approve a lead-based paint activities training course offered by a person who satisfies the requirements of subsection (a).

(c) A lead-based paint activities training course must be conducted by an instructor approved by the state department as provided in the rules adopted under section 6 of this chapter.

Sec. 5. (a) A clearance examiner training program must meet requirements specified in rules adopted under section 6 of this chapter before providing initial or refresher training to a person seeking a license under section 3(c) of this chapter.

(b) The state department may approve a clearance examiner training course offered as part of a program that satisfies the requirements of subsection (a).

(c) A clearance examiner training course must be conducted by an instructor approved by the state department as provided in the rules adopted under section 6 of this chapter.

Sec. 6. (a) Rules adopted by the air pollution control board before July 1, 2009, under IC 13-17-14-5 (repealed) are considered rules of the state department after December 31, 2009.

(b) The state department shall adopt rules under IC 4-22-2 to replace the rules of the air pollution control board described in subsection (a) and to implement this chapter. The rules adopted by the state department must contain at least the elements required to receive program authorization under 40 CFR 745, Subpart L, as in

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effect July 1, 2002, and must do the following:

- (1) Establish minimum requirements for the issuance of a license for:
 - (A) lead-based paint activities inspectors, risk assessors, project designers, supervisors, abatement workers, and contractors; and
 - (B) clearance examiners.
- (2) Establish minimum requirements for approval of the providers of:
 - (A) lead-based paint activities training courses; and
 - (B) clearance examiner training courses.
- (3) Establish minimum qualifications for:
 - (A) lead-based paint activities training course instructors; and
 - (B) clearance examiner training course instructors.
- (4) Extend the applicability of the licensing requirements to other facilities as determined necessary by the board.
- (5) Establish work practice standards.
- (6) Establish a state department or third party examination process.
- (7) Identify activities, if any, that are exempted from licensing requirements.
- (8) Establish a reasonable fee based on current market value per person, per license, for the period the license is in effect for a person seeking a license under section 3 of this chapter. However, the following may not be required to pay a fee established under this subdivision:
 - (A) A state.
 - (B) A municipal corporation (as defined in IC 36-1-2-10).
 - (C) A unit (as defined in IC 36-1-2-23).
- (9) Establish a reasonable fee based on current market value per course, per year, for a lead-based paint training program seeking approval of a lead-based paint training course under section 4 of this chapter. However, the following may not be required to pay a fee established under this subdivision:
 - (A) A state.
 - (B) A municipal corporation (as defined in IC 36-1-2-10).
 - (C) A unit (as defined in IC 36-1-2-23).
 - (D) An organization exempt from income taxation under 26 U.S.C. 501(a).
- (10) Establish a reasonable fee based on current market value per course, per year, for a clearance examiner training

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program seeking approval of a clearance examiner training course under section 5 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

- (A) A state.
- (B) A municipal corporation (as defined in IC 36-1-2-10).
- (C) A unit (as defined in IC 36-1-2-23).
- (D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(c) The amount of the fees under subsection (b) may not be more than is necessary to recover the cost of administering this chapter.

(d) The proceeds of the fees under subsection (b) must be deposited in the lead trust fund established by section 7 of this chapter.

(e) The minimum requirements established under subsection (b)(1) must be sufficient to allow the clearance examiner to perform clearance examinations without the approval of a certified risk assessor or inspector as provided in 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002.

Sec. 7. (a) The lead trust fund established by IC 13-17-14-6 (repealed) is reestablished to provide a source of money for the purposes set forth in subsection (f).

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The sources of money for the fund are the following:

- (1) License fees established under section 6 of this chapter.
- (2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.
- (3) Penalties imposed under sections 14 and 15 of this chapter for violations of this chapter and rules adopted under this chapter concerning lead-based paint activities.

(f) The state department may use money in the fund to do the following:

- (1) Pay the expenses of administering this chapter.
- (2) Cover other costs related to implementation of 40 CFR 745 for lead-based paint activities in target housing and child

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occupied facilities.

Sec. 8. (a) A lead-based paint activities contractor licensed under this chapter shall compile records concerning each lead-based paint activities project performed by the lead-based paint activities contractor. The records must include the following information on each lead-based paint activities project:

- (1) The name, address, and proof of license of the following:**
 - (A) The person who supervised the lead-based paint activities project for the lead-based paint activities contractor.**
 - (B) Each employee or agent of the lead-based paint activities contractor that worked on the project.**
- (2) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.**
- (3) The site of the lead-based paint activities project.**
- (4) A description of the lead-based paint activities project.**
- (5) The date on which the lead-based paint activities project was started and the date on which the lead-based paint activities project was completed.**
- (6) A summary of procedures that were used in the lead-based paint activities project to comply with applicable federal and state standards for lead-based paint activities projects.**
- (7) A detailed written description of the lead-based paint activities, including methods used, locations of rooms or components where lead-based paint activities occurred, reasons for selecting particular lead-based paint activities methods for each component, and any suggested monitoring of encapsulants or enclosures.**
- (8) The occupant protection plan.**
- (9) The results of clearance testing and all soil analysis (if applicable) and the name of each federally approved laboratory that conducted the analysis.**
- (10) The amount of material containing lead-based paint that was removed from the site of the project.**
- (11) The name and address of each disposal site used for the disposal of lead-based paint containing material that was disposed of as a result of the lead-based paint activities project.**

(b) A copy of each receipt issued by a disposal site identified under subsection (a)(11) must be included in the records concerning the lead-based paint activities project that are compiled

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under this section.

(c) A lead-based paint activities contractor shall retain the records compiled under this section concerning a particular lead-based paint activities project for at least three (3) years after the lead-based paint activities project is concluded.

(d) A lead-based paint activities contractor shall make records kept under this section available to the state department upon request.

Sec. 9. A political subdivision or a state agency may not accept a bid for a lead-based paint activities project from a person who does not hold a lead-based paint activities license.

Sec. 10. Without limiting the authority to inspect under IC 16-41-5-1, the state department may do the following:

- (1) Inspect the site of a lead-based paint activities project:
 - (A) during the project; or
 - (B) after the project is completed.
- (2) Conduct an investigation of a lead-based paint activities project upon:
 - (A) the state department's own initiation; or
 - (B) the receipt of a complaint by a person.
- (3) Conduct an investigation of the provider of a lead-based paint activities training course upon:
 - (A) the state department's own initiation; or
 - (B) the receipt of a complaint by a person.

Sec. 11. (a) If the state department finds that a lead-based paint activities project is not being performed in accordance with applicable laws or rules, the state department may enjoin further work on the lead-based paint activities project without prior notice or hearing by delivering a notice to:

- (1) the lead-based paint activities contractor engaged in the lead-based paint activities project; or
- (2) an agent or representative of the lead-based paint activities contractor.

(b) A notice issued under this section must:

- (1) specify the violations of laws or rules that are occurring on the lead-based paint activities project; and
- (2) prohibit further work on the lead-based paint activities project until the violations specified under subdivision (1) cease and the notice is rescinded by the state department.

(c) Not later than ten (10) days after receiving written notification from a contractor that violations specified in a notice issued under this section have been corrected, the state department

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shall issue a determination regarding rescission of the notice.

(d) A lead-based paint activities contractor or any other person aggrieved or adversely affected by the issuance of a notice under subsection (a) may obtain a review of the state department's action under IC 4-21.5.

Sec. 12. (a) The state department may under IC 4-21.5 reprimand, or suspend or revoke the license of, a clearance examiner or a lead-based paint activities inspector, risk assessor, project designer, supervisor, worker, or contractor for any of the following reasons:

- (1) Violating any requirements of this chapter or rules adopted under section 6 of this chapter.
- (2) Fraudulently or deceptively obtaining or attempting to obtain a license under this chapter.
- (3) Failing to meet the qualifications for a license or failing to comply with the requirements of applicable laws or rules.
- (4) Failing to meet an applicable federal or state standard for lead-based paint activities.

(b) The state department may under IC 4-21.5 reprimand a lead-based paint activities contractor or suspend or revoke the license of a lead-based paint activities contractor that employs a person who is not licensed under this chapter for a purpose that requires the person to hold a license issued under this chapter.

(c) The state department may under IC 4-21.5 revoke the approval of a clearance examiner training course or a lead-based paint activities training course for any of the following reasons:

- (1) Violating any requirement of this chapter.
- (2) Falsifying information on an application for approval.
- (3) Misrepresenting the extent of a training course's approval.
- (4) Failing to submit required information or notifications in a timely manner.
- (5) Failing to maintain required records.
- (6) Falsifying approval records, instructor qualifications, or other approval information.

Sec. 13. (a) This section applies to:

- (1) remodeling, renovation, and maintenance activities at target housing and child occupied facilities built before 1960; and
- (2) lead-based paint activities.

(b) This section does not apply to an individual who performs remodeling, renovation, or maintenance activities within a residential dwelling that the individual owns, unless the residential

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dwelling is occupied:

(1) while the activities are being performed, by an individual other than the owner or a member of the owner's immediate family; or

(2) by a child who:

(A) is less than seven (7) years of age or an age specified in rules adopted under section 6 of this chapter; and

(B) resides in the building and has been identified as having an elevated blood lead level.

(c) A person not exempted under subsection (b) from the application of this section who performs an activity under subsection (a) that disturbs:

(1) exterior painted surfaces of more than twenty (20) square feet;

(2) interior painted surfaces of more than two (2) square feet in any one (1) room or space; or

(3) more than ten percent (10%) of the combined interior and exterior painted surface area of components of the building; shall meet the requirements of subsections (e), (f), and (g).

(d) For purposes of this section, paint is considered to be lead-based paint unless the absence of lead in the paint has been determined by a lead-based paint inspection conducted under this chapter.

(e) A person may not use any of the following methods to remove lead-based paint:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without high efficiency particulate air local exhaust control.

(3) Abrasive blasting or sandblasting without high efficiency particulate air local exhaust control.

(4) A heat gun that:

(A) operates above one thousand one hundred (1,100) degrees Fahrenheit; or

(B) chars the paint.

(5) Dry scraping, except:

(A) in conjunction with a heat gun; or

(B) within one (1) foot of an electrical outlet.

(6) Dry sanding, except within one (1) foot of an electrical outlet.

(f) In a space that is not ventilated by the circulation of outside air, a person may not strip lead-based paint using a volatile stripper that is a hazardous chemical under 29 CFR 1910.1200, as

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in effect July 1, 2002.

(g) A person conducting activities under subsection (a) on painted exterior surfaces may not allow visible paint chips or painted debris that contains lead-based paint to remain on the soil, pavement, or other exterior horizontal surface for more than forty-eight (48) hours after the surface activities are complete.

Sec. 14. (a) A person who violates:

- (1) any provision of this chapter; or
- (2) a rule or standard adopted by the state department under section 6 of this chapter;

is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for any violation.

(b) The state department may:

- (1) recover the civil penalty described in subsection (a) in a civil action commenced in any court with jurisdiction; and
- (2) request in the action that the person be enjoined from continuing the violation.

Sec. 15. A person who obstructs, delays, resists, prevents, or interferes with:

- (1) the state department; or
- (2) the state department's personnel or designated agent;

in the performance of an inspection or investigation performed under IC 16-41-5-1 commits a Class C infraction. Each day of violation of this section constitutes a separate infraction.

SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 13-11-2-0.5; IC 13-11-2-25.5; IC 13-11-2-36.5; IC 13-11-2-61.5; IC 13-11-2-66.5; IC 13-11-2-66.7; IC 13-11-2-118.3; IC 13-11-2-118.5; IC 13-11-2-229.5; IC 13-17-14.

SECTION 19. [EFFECTIVE JULY 1, 2009] (a) The treasurer of state shall retain in the lead trust fund reestablished by IC 16-41-39.8, as added by this act, the balance in that fund on December 31, 2009.

(b) This SECTION expires July 1, 2010.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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